

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**ALAN SMITH,**

**Plaintiff**

**v.**

**JANINE DONATE, *et al.*,**

**Defendants**

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**CIVIL NO. 4:10-2133**

**(Judge Rambo)**

**(Magistrate Judge Carlson)**

**MEMORANDUM**

Before the court is an April 5, 2012, report of the magistrate judge (Doc. 144) to whom this matter is referred in which he recommends that the motion for summary judgment filed by Defendant Dr. Edward J. Zaloga be granted. Dr. Zaloga is one of many defendants in this case. The causes of action alleged against Dr. Zaloga is a complaint based upon an alleged violation of the Eighth Amendment by failing to take action to stop the physical beating and abuse by fellow staff against Plaintiff.

The magistrate judge found that Zaloga was not a law enforcement officer nor a corrections officer. He was a private contractor who provides medical services to inmates. To the extent that it can be found that there is an allegation of a claim of medical negligence, the magistrate judge found that Plaintiff is barred from pursuing a state law medical negligence claim by his failure to comply with Pennsylvania Rule of Civil Procedure 1042.3, which requires the filing of a valid certificate of merit along with his malpractice claim.

Plaintiff has filed objections to the report and recommendation to which Defendant Zaloga has filed a response. The matter is ripe for disposition.

As Defendant notes in his response to Plaintiff's objections, Plaintiff has not made specific objections to the report and recommendation nor has he stated the basis for the objections. Plaintiff does not dispute the magistrate judge's finding that the doctor is not a police officer or prison correctional officer and has no duty to intervene. Nor does Plaintiff argue with the finding that a certificate of merit is required in a medical malpractice claim. Plaintiff's argument is one of persistence in his arguments from prior pleadings.

The report and recommendation of the magistrate judge will be adopted. An appropriate order will be issued.

s/Sylvia H. Rambo  
United States District Judge

Dated: May 24, 2012.

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**ALAN SMITH,**

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**CIVIL NO. 4:10-2133**

**(Judge Rambo)**

**(Magistrate Judge Carlson)**

**ORDER**

In accordance with the accompanying memorandum, **IT IS HEREBY ORDERED THAT:**

- 1) The court adopts the report and recommendation of Magistrate Judge Carlson (Doc. 144).
- 2) Defendant Edward J. Zaloga's motion for summary judgment (doc. 106) is **GRANTED**.
- 3) The Clerk of Court shall defer the entry of this judgment until the conclusion of this case.
- 4) This case is remanded to Magistrate Judge Carlson for further proceedings.

s/Sylvia H. Rambo  
United States District Judge

Dated: May 24, 2012.